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Legislative History – Montana Session Law

Chapter: 48 Session L: 2007
Bill Number: HB 65

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☒
Third Reading Bill	☒
Final Version of Bill	☒

House

Committee: Business and Labor

Hearing Date(s): 01/09/2007

Committee Report: Bill passed as amended

Senate

Committee: Business, Labor, and Economic Affairs

Hearing Date(s): 03/06/2007

Committee Report: Bill Concurred

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Charlotty Herman
Date: 07/23/2026
Notes: No Conference Committee

Bill Tracker Login

HB 65: Revise uninsured employer's subsequent injury fund-increase dept. inspect. auth.

SUMMARY BILL TEXT STATUS FISCAL

AMENDMENTS DOCUMENTS & LINKS

Show Only Votes

Date	Action	Committee
03/27/07	Chapter Number Assigned	
03/27/07	(H) Signed by Governor	
03/20/07	(H) Transmitted to Governor	
03/19/07	(S) Signed by President	
03/19/07	(H) Signed by Speaker	
03/16/07	(H) Returned from Enrolling	
03/15/07	(C) Printed - New Version Available	
03/14/07	(H) Sent to Enrolling	
03/14/07	(S) Returned to House	
03/14/07	(S) 3rd Reading Concurred	
03/14/07	(S) Scheduled for 3rd Reading	
03/13/07	(S) 2nd Reading Concurred on Voice Vote	
03/13/07	(S) Scheduled for 2nd Reading	
03/09/07	(S) Committee Report--Bill Concurred	(S) Business, Lab
03/09/07	(S) Committee Executive Action--Bill Concurred	(S) Business, Lab

Date	Action	Committee
03/06/07	(S) Hearing	(S) Business, Lab
02/10/07	(S) Hearing Canceled	(S) Business, Lab
01/31/07	(S) Referred to Committee	(S) Business, Lab
01/31/07	(S) First Reading	
01/30/07	(H) Transmitted to Senate	
01/30/07	(H) 3rd Reading Passed	
01/30/07	(H) Scheduled for 3rd Reading	
01/29/07	(H) 2nd Reading Passed	
01/29/07	(H) Scheduled for 2nd Reading	
01/25/07	(C) Printed - New Version Available	
01/25/07	(H) Committee Report--Bill Passed as Amended	(H) Business and
01/25/07	(H) Committee Executive Action--Bill Passed as Amended	(H) Business and
01/09/07	(H) Hearing	(H) Business and
01/03/07	(H) First Reading	
12/29/06	(H) Referred to Committee	(H) Business and
12/12/06	(C) Introduced Bill Text Available Electronically	
12/12/06	(H) Introduced	
12/06/06	(C) Pre-Introduction Letter Sent	
12/06/06	(C) Draft in Assembly/Executive Director Review	
12/05/06	(C) Draft in Final Drafter Review	
12/04/06	(C) Bill Draft Text Available Electronically	
12/04/06	(C) Draft in Input/Proofing	
12/04/06	(C) Draft to Drafter - Edit Review [SAB]	

Date	Action	Committee
12/04/06	(C) Draft in Edit	
12/02/06	(C) Draft in Legal Review	
11/24/06	(C) Draft On Hold	

Showing 1 to 43 of 43 entries

Previous Next

Build: 2.59.0

HB 64 INTRODUCED BY CLARK *LC0478 DRAFTER: O'CONNELL*

REMOVE TOTAL CARE LANGUAGE FROM DEVELOPMENTAL DISABILITY COMMITMENT

BY REQUEST OF DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

12/12	INTRODUCED		
12/15	FISCAL NOTE REQUESTED		
1/02	FISCAL NOTE RECEIVED		
1/03	FISCAL NOTE PRINTED		
1/04	REFERRED TO HUMAN SERVICES		
1/12	HEARING		
1/25	COMMITTEE EXECUTIVE ACTION—BILL PASSED	14	0
1/25	COMMITTEE REPORT—BILL PASSED		
1/29	2ND READING PASSED	97	3
1/30	3RD READING PASSED	96	4
	TRANSMITTED TO SENATE		
1/31	REFERRED TO PUBLIC HEALTH, WELFARE AND SAFETY		
3/12	HEARING		
3/19	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	0
3/19	COMMITTEE REPORT—BILL CONCURRED		
3/20	2ND READING CONCURRED ON VOICE VOTE	49	0
3/21	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/21	SENT TO ENROLLING		
3/22	RETURNED FROM ENROLLING		
3/28	SIGNED BY SPEAKER		
3/29	SIGNED BY PRESIDENT		
3/29	TRANSMITTED TO GOVERNOR		
4/05	SIGNED BY GOVERNOR		
4/05	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 122		
	EFFECTIVE DATE: 10/01/2007 - ALL SECTIONS		

HB 65 INTRODUCED BY VILLA *LC0500 DRAFTER: B. CAMPBELL*

REVISE UNINSURED EMPLOYER'S SUBSEQUENT INJURY FUND-INCREASE DEPT. INSPECT. AUTH.

BY REQUEST OF DEPARTMENT OF LABOR AND INDUSTRY

9/20	FISCAL NOTE NEEDED		
12/12	INTRODUCED		
12/15	FISCAL NOTE REQUESTED		
12/29	REFERRED TO BUSINESS AND LABOR		
1/02	FISCAL NOTE RECEIVED		
1/03	FISCAL NOTE PRINTED		
1/09	HEARING		
1/25	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	0
1/25	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/29	2ND READING PASSED	79	21
1/30	3RD READING PASSED	83	17
	TRANSMITTED TO SENATE		
1/31	REFERRED TO BUSINESS, LABOR, AND ECONOMIC AFFAIRS		
3/06	HEARING		
3/09	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	9	0
3/09	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED ON VOICE VOTE	47	3
3/14	3RD READING CONCURRED	44	4
	RETURNED TO HOUSE		
3/14	SENT TO ENROLLING		
3/16	RETURNED FROM ENROLLING		
3/19	SIGNED BY SPEAKER		
3/19	SIGNED BY PRESIDENT		
3/20	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
3/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 48		
	EFFECTIVE DATE: 7/01/2007 - ALL SECTIONS		

HOUSE BILL NO. 65

INTRODUCED BY D. VILLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; DESIGNATING THE DEPARTMENT OF LABOR AND INDUSTRY AS A CRIMINAL JUSTICE AGENCY WITH RESPECT TO VIOLATIONS OF THE WORKERS' COMPENSATION ACT; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROVIDING THE DEPARTMENT WITH AUTHORITY TO NOTIFY INSURERS UNDER CERTAIN CONDITIONS OF THE STATUS OF AN EMPLOYEE AS A PERSON WITH A DISABILITY FOR SUBSEQUENT INJURY FUND PURPOSES; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-203, 39-71-503, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Inspection of construction sites -- public policy -- penalty.** (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;

(ii) a building permit;

(iii) an electrical permit;

(iv) an elevator permit;

(v) a mechanical permit; or

(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

NEW SECTION. **Section 2. Person with disability -- notification to insurer of employee's certification -- limitation.** (1) If an insurer submits to the department the name of a current employee of an employer covered by that insurer for workers' compensation purposes, the department shall, except as provided in subsection (2), identify whether that current employee has been certified by the department as a person with a disability.

(2) The fact that an employee has been certified by the department as a person with a disability may not be disclosed by the department to an insurer unless the employee has expressly consented in writing to the department's disclosure of that information to the insurer of an employer that is currently employing the employee. The consent may be withdrawn upon written notification to the department.

(3) The grant or withholding of the employee's consent may not affect the department's decision of whether to certify the employee as a person with a disability.

NEW SECTION. **Section 3. Reimbursement of subsequent injury fund -- effect on claims experience rating.** An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

Section 4. Section 39-71-203, MCA, is amended to read:

"39-71-203. Powers of department -- rules -- designation as criminal justice agency. (1) The department ~~is hereby vested with~~ has full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The department may adopt rules to carry out the provisions of this chapter.

(3) The department is designated as a criminal justice agency, as defined in 44-5-103, for the purpose of obtaining confidential criminal justice information regarding persons who are or are believed to be committing acts in violation of this chapter, including but not limited to:

(a) the improper avoidance of the coverage requirements provided for in 39-71-401; or

(b) the improper application for or use of the independent contractor exemption certification provided for in 39-71-417."

Section 5. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining balance for administrative costs -- appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for the administration of the fund and for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

Section 6. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. (1) Notwithstanding the provisions of 39-71-407, ~~and~~ 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the ~~sums~~ money in the fund. If the department determines at any time that the ~~sums~~ money in the fund ~~are~~ is not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000."

Section 7. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter -- insurer liability for compensation limited. (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this

chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectable in the next assessment period pursuant to 39-71-915."

Section 8. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer -- employers -- definition -- collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30

each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium

surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$200,000~~ $500,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

NEW SECTION. **Section 9. Codification instruction.** (1) [Sections 1 and 3] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 3].

(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 2].

NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 11. Applicability.** [Sections 5 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

- END -

HOUSE BILL NO. 65

INTRODUCED BY D. VILLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; ~~DESIGNATING THE DEPARTMENT OF LABOR AND INDUSTRY AS A CRIMINAL JUSTICE AGENCY WITH RESPECT TO VIOLATIONS OF THE WORKERS' COMPENSATION ACT;~~ CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; ~~PROVIDING THE DEPARTMENT WITH AUTHORITY TO NOTIFY INSURERS UNDER CERTAIN CONDITIONS OF THE STATUS OF AN EMPLOYEE AS A PERSON WITH A DISABILITY FOR SUBSEQUENT INJURY FUND PURPOSES;~~ PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS ~~39-71-203,~~ 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Inspection of construction sites -- public policy -- penalty.** (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;

(ii) a building permit;

(iii) an electrical permit;

(iv) an elevator permit;

(v) a mechanical permit; or

(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

~~NEW SECTION.~~ **~~Section 2. Person with disability -- notification to insurer of employee's certification -- limitation.~~** ~~(1) If an insurer submits to the department the name of a current employee of an employer covered by that insurer for workers' compensation purposes, the department shall, except as provided in subsection (2), identify whether that current employee has been certified by the department as a person with a disability.~~

~~(2) The fact that an employee has been certified by the department as a person with a disability may not~~

~~be disclosed by the department to an insurer unless the employee has expressly consented in writing to the department's disclosure of that information to the insurer of an employer that is currently employing the employee. The consent may be withdrawn upon written notification to the department.~~

~~(3) The grant or withholding of the employee's consent may not affect the department's decision of whether to certify the employee as a person with a disability.~~

NEW SECTION. **Section 2. Reimbursement of subsequent injury fund -- effect on claims experience rating.** An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

~~**Section 4.** Section 39-71-203, MCA, is amended to read:~~

~~**"39-71-203. Powers of department -- rules -- designation as criminal justice agency.** (1) The department is hereby vested with has full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.~~

~~(2) The department may adopt rules to carry out the provisions of this chapter.~~

~~(3) The department is designated as a criminal justice agency, as defined in 44-5-103, for the purpose of obtaining confidential criminal justice information regarding persons who are or are believed to be committing acts in violation of this chapter, including but not limited to:~~

~~(a) the improper avoidance of the coverage requirements provided for in 39-71-401; or~~

~~(b) the improper application for or use of the independent contractor exemption certification provided for in 39-71-417."~~

SECTION 3. SECTION 39-71-225, MCA, IS AMENDED TO READ:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation~~; and~~.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality

of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 4. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining balance for administrative costs -- appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum

payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for ~~the administration of the fund and for~~ the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

SECTION 5. SECTION 39-71-508, MCA, IS AMENDED TO READ:

"39-71-508. Coordination of remedies -- limitation of liability of employee to third-party providers -- rights of third-party providers. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

~~(1)~~(a) a claim for benefits from the uninsured employers' fund;

~~(2)~~(b) a damage action against the employer in accordance with 39-71-509;

~~(3)~~(c) an independent action against an employer as provided in 39-71-515; or

~~(4)~~(d) any other civil remedy provided by law.

(2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.

(3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund."

Section 6. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. (1) Notwithstanding the provisions of 39-71-407, ~~and~~ 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the

~~sums~~ money in the fund. If the department determines at any time that the ~~sums~~ money in the fund ~~are~~ is not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000."

Section 7. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter -- insurer liability for compensation limited. (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectable in the next assessment period pursuant to 39-71-915."

Section 8. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer -- employers -- definition -- collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a

plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of

establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$200,000~~ $500,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

NEW SECTION. **Section 9. Codification instruction.** ~~(1)~~ [Sections 1 and ~~3~~ 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and ~~3~~ 2].

~~(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the provisions of Title 39, chapter 71, part 9, apply to [section 2].~~

NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2007.

NEW SECTION. **Section 11. Applicability.** [Sections ~~5~~ 4 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

- END -

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Inspection of construction sites -- public policy -- penalty. (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;

(ii) a building permit;

(iii) an electrical permit;

(iv) an elevator permit;

(v) a mechanical permit; or

(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

Section 2. Reimbursement of subsequent injury fund -- effect on claims experience rating. An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

Section 3. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation~~; and~~.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 4. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining balance for administrative costs -- appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for ~~the administration of the fund and for~~ the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

Section 5. Section 39-71-508, MCA, is amended to read:

"39-71-508. Coordination of remedies -- limitation of liability of employee to third-party providers -- rights of third-party providers. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

~~(1)~~(a) a claim for benefits from the uninsured employers' fund;

~~(2)~~(b) a damage action against the employer in accordance with 39-71-509;

~~(3)~~(c) an independent action against an employer as provided in 39-71-515; or

~~(4)~~(d) any other civil remedy provided by law.

(2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.

(3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund."

Section 6. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. (1) Notwithstanding the provisions of 39-71-407, ~~and~~ 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the ~~sums~~ money in the fund. If the department determines at any time that the ~~sums~~ money in the fund ~~are~~ is not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000."

Section 7. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter -- insurer liability for compensation limited. (1) A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915."

Section 8. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer -- employers -- definition -- collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed

annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$200,000~~ $500,000 for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Applicability. [Sections 4 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

- END -

I hereby certify that the within bill,
HB 0065, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2019.

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 65

INTRODUCED BY D. VILLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note – 2009 Biennium

Bill #	HB0065	**Title:**	Revise uninsured employer's subsequent injury fund-increase dept. inspect. auth.
Primary Sponsor:	Villa, D.	**Status:**	As Introduced

☐ Significant Local Gov Impact ☐ Include in HB 2 ☐ Technical Concerns

☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

	Difference	Difference	Difference	Difference
Expenditures:				
General Fund	$0	$0	$0	$0
Revenue:				
General Fund	$0	$0	$0	$0
Net Impact-General Fund Balance	$0	$0	$0	$0

FISCAL ANALYSIS

Assumptions:

1. The Montana State Fund's current practice for determining experience modification factors is to exclude claim losses that are reimbursed by the Subsequent Injury Fund according to the National Council on Compensation Insurance experience rating plan.
2. The Department of Labor and Industry does not regularly provide Montana State Fund notice of persons certified with the Subsequent Injury Fund.
3. The Montana State Fund must request from the Department of Labor and Industry affirmation that a specific current employee is certified by the Subsequent Injury Fund. This information will be disclosed as long as the Subsequent Injury Fund certified employee has given written consent for this disclosure.
4. If the Subsequent Injury Fund employee does not provide written consent to release the fact that they are Subsequent Injury Fund certified, Montana State Fund may not receive the reimbursement from the Subsequent Injury Fund that the employer would otherwise be entitled to receive in their loss experience.
5. There is no fiscal impact to the Montana State Fund from this legislation.
6. There is no fiscal impact to the Department of Labor and Industry from this legislation.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*

EXHIBIT 2
DATE 1-9-07
HB 65

Amendments to House Bill 65
First Reading copy
Before the House Business and Labor Committee
January 9, 2007

1. Title, lines 9 through 11.
Following: "LAWS"
Strike: remainder of line 9 through "PURPOSES" on line 11

2. Title, line 13.
Following: "FACTOR;"
Insert: "PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY FUND CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER;"

3. Title, line 16.
Following: "39-71-203,"
Insert: "39-71-225,"

4. Page 2, line 22 through page 3, line 2.
Strike: section 2 in its entirety
Renumber: subsequent sections

5. Page 3, line 24.
Insert: "**Section 4.** Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; ~~and~~

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution; and

(d) information to identify to any insurer that is at risk on a claim whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that claims costs have actually been reimbursed by the subsequent injury fund and the amount of that reimbursement.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Renumber: subsequent sections

6. Page 7, line 28 through line 1, page 8.
Strike: "3" on line 28
Insert: "2"
Strike: "3" on line 29
Insert: "2"
Strike: line 30 through line 1, page 8

-END-

prepared by:

Mark Cadwallader,
staff attorney
Department of Labor and Industry
406.444.0280 (voice)
406.444.1394 (fax)
mcadwallader@mt.gov

EXHIBIT 3
DATE 1-9-07
HB 65

Amendments to House Bill 65
First Reading copy
Before the House Business and Labor Committee
January 9, 2007

1. Page 4, line 17.
Following: "of"
Strike: "for the administration of the fund and"

-END-

prepared by:

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staff attorney
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406.444.0280 (voice)
406.444.1394 (fax)
mcadwallader@mt.gov

MONTANA SELF-INSURERS GUARANTY FUND

Montana Self-Insured Employers – 1/1/07

EXHIBIT 4
DATE 1-9-07
HB 65

NO.	ORGANIZATION
6	Ash Grove Cement
12	Con Agra Foods Inc.
19	F.H. Stoltze Land & Lumber
24	Louisiana-Pacific Corp.
25	Benefis Health Care
26	Montana Health Network
28	Big Sky Coal Co. (Peabody)
29	Rosauer's Super Markets
36	Smurfit-Stone Container Corp
43	Ryder Systems Inc.
44	Fed Ex Corp.
46	St. Patrick Hospital
47	St. Joseph Hospital
49	Northwest Health Care Corp.
50	St. Thomas Child & Fam. Ctr.
53	Target Corp.
56	J.H. Kelly, LLC
57	CHS Cooperatives
58	International Paper Co.
59	Stillwater Mining Co.
60	Montana Contractors
62	METS Pool
64	Holcim, Inc.
65	University of Great Falls
66	Les Schwab Tires
67	Costco
69	Safeway
70	Sisters of Charity-Leavenworth
72	Plum Creek Timber Co., Inc.
73	Watkins & Shepard Trucking
74	Kroger Co.
75	Flying J. Inc.
76	Fed Ex Ground Package System
77	NorthWestern Corporation
78	Roseburg Forest Products
79	Harnish Group Inc. (5/1/05)
80	Stimson Lumber Co.
81	New Albertson's Inc.

XXXX XXXX XXXX XXXX

PUBLIC SELF-INSURED EMPLOYERS

(Non Fund Members)

1 Missoula County
2 MT Assoc of Counties
3 MT Municipal Insurers Authority
4 MT School Group
5 MT University System (MUS)
Self Funded Workers' Comp Program

P.O. Box 4133 ◆ Missoula, Montana 59806 ◆ Phone (406)549-8849 ◆ Fax (406)549-0350 ◆ bastian@bigsky.net

Room 172

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE: 1-9-07

NAME	PRESENT	ABSENT/ EXCUSED
REP. SCOTT MENDENHALL, CHAIR	✓	
REP. MIKE MILBURN, VICE CHAIR	✓	
REP. JIM KEANE, VICE CHAIR	✓	
REP. ELSIE ARNTZEN	✓	
REP. SHANNON AUGARE	✓ late	✓
REP. SCOTT BOGGIO	✓	
REP. ERNIE DUTTON	✓	
REP. KEVIN FUREY	✓	
REP. RALPH HEINERT	✓	
REP. LLEW JONES	✓	
REP. HARRY KLOCK	✓	
REP. MICHELE REINHART	✓	
REP. WAYNE STAHL	✓ late	✓
REP. BILL THOMAS	✓	
REP. KENDALL VAN DYK	✓	
REP. JONATHAN WINDY BOY		✓

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 106** (first reading copy -- white) **do pass.**

Signed: Scott Mendenhall
Representative Scott Mendenhall, Chair

- END -

Committee Vote:
Yes 16, No 0.

051133SC.hjd
1/9/07

Montana House of Representatives
Visitors Register

BUSINESS AND LABOR COMMITTEE **Date** 1-9-07

Bill No. [redacted] **Sponsor(s)** J. Keane

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Jason Miller	MT AFL-CIO	X		
Dori Judge	Teamsters 190	X		
Dan Flynn	IBEW	X		
Jim Jacobsen	Mt Am Legion	X		
Roger A. Hagan	MT N.G. Assoc's	X		
Joe Bennion	MT Chamber		X	
JD Lynch	MT Sht Bldg Trades	X		
Riley Johnson	NFIB		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Montana House of Representatives
Visitors Register

BUSINESS AND LABOR COMMITTEE **Date** 1-9-07

Bill No. [redacted] **Sponsor(s)** J. Keane

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Jason Miller	MT AFL-CIO	X		
Don Judge	Teamsters 190	X		
Rick Mullenberg	DEPT LABOR/INDUSTRY	X		
KEITH KELLY	DEPT of LABOR/Industry	X		
Dan Flynn	IBEW	X		
J. Lynch	MT State Building Trades	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Montana House of Representatives
Visitors Register

BUSINESS AND LABOR COMMITTEE **Date** 1-9-07

Bill No. [redacted] **Sponsor(s)** D. Wilson

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Dori Judge	MT QWRC Teamsters 190	Amend		
Jacqueline Lenmark	AM Jobs Alliance	Amend		
Bob Worthington	MMIA	Amend		
George Wood	Mt. Self-Insurers Assn	Amend		
Nancy Butler	MT State Fund	Amend		
Al Smith	MTLA	Amend		
Shawn Bu[illegible]	MSCOIA	Amend		
Lazelle Tibbett	PCIAA	Amend.		
[illegible]	MTAFC-CIO	Amend		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Montana House of Representatives
Visitors Register

BUSINESS AND LABOR COMMITTEE **Date** 1-9-07

Bill No. [redacted] **Sponsor(s)** D. Cordier

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Anna Marie Mac	Montana Dept Commerce	X		
Marc Schweitzer	Kalispell Chamber	X		
Charles Brooks	Billings Chamber	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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Montana House of Representatives
Visitors Register

BUSINESS AND LABOR COMMITTEE **Date** 1-9-07

Bill No. [redacted] **Sponsor(s)** K. Furey

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Don Judge	MT Nurses Association	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

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MINUTES

MONTANA SENATE
60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS, LABOR, AND ECONOMIC AFFAIRS

Call to Order: By **CHAIRMAN VICKI COCCHIARELLA**, on March 6, 2007 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Vicki Cocchiarella, Chairman (D)
Sen. Joe Balyeat (R)
Sen. Roy Brown (R)
Sen. John Esp (R)
Sen. Verdell Jackson (R)
Sen. Lane L. Larson (D)
Sen. Don Ryan (D)
Sen. Frank Smith (D)
Sen. Carolyn Squires (D)
Sen. Donald J. Steinbeisser (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: None.

Members Absent: None.

Staff Present: Claudia Johnson, Committee Secretary
Pat Murdo, Legislative Branch

Audio Committees: These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:
Hearing & Date Posted: HB 76, 2/23/2007; HB 137, 2/23/2007; HB 65, 2/23/2007
Executive Action: None.

00:06:43 Chairwoman Cocchiarella

HEARING ON HB 76

Opening Statement by Sponsor:

00:07:38 **REP. WALTER MCNUTT (R), HD 37**, opened the hearing on **HB 76**, Revise and clarify administrative procedures and appeals for human rights laws.

Proponents:

00:09:48 Jerry Keck, Administrator, Employment Relations Bureau, Department of Labor and Industry (DLI)

EXHIBIT(bus47a01)

Opponents:

00:14:49 Andrea Olsen, Montana Trial Lawyers Association

Informational Testimony: None.

Questions from Committee Members and Responses:

00:16:53 Sen. Tropila to Jerry Keck, DLI

00:18:54 Sen. Brown to Andrea Olsen, Montana Trial Lawyers Association

00:21:07 Sen. Cocchiarella to Andrea Olsen, Montana Trial Lawyers Association

00:23:00 Sen. Squires to Jerry Keck, DLI

00:25:51 Sen. Ryan to Andrea Olsen, Montana Trial Lawyers Association

00:27:02 Sen. Ryan to Mike Malloy, Attorney, Human Rights Commission

Closing by Sponsor:

00:33:05 Rep. Mcnutt

HEARING ON HB 137

Opening Statement by Sponsor:

00:35:58 **REP. DAN VILLA (D), HD 86**, opened the hearing on **HB 137**, Revise microbusiness development law.

Proponents:

00:37:00 Quinn Ness, Montana Department of Commerce

EXHIBIT(bus47a02)

00:39:29 Paul Tuss, Bear Paw Corporation

00:40:31 Sheldon Bartel, Montana Business Assistance Connection

EXHIBIT(bus47a03)

00:42:08 Sen. Jerry Black

00:43:29 Ronda Wiggers, Helena and Great Falls Chambers of Commerce

00:44:31 Riley Johnson, National Federation of Independent Business(NFIB)

00:44:45 Janice Copeland, Headwaters Resource and Development Council

00:45:18 Gary Amestoy, Richland Economic Development Corporation

Opponents: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

00:45:59 Sen. Ryan to Paul Tuss, Bear Paw Corporation

00:47:30 Sen. Balyeat to Paul Tuss, Bear Paw Corporation

00:49:03 Sen. Balyeat to Quinn Ness, DOC

00:51:56 Sen. Balyeat to Riley Johnson, National Federation of Independent Business (NFIB)

00:54:10 Sen. Esp to Rep. Villa

00:55:34 Sen. Ryan to Andy Poole, DOC

00:57:02 Sen. Squires to Rep. Villa

00:57:48 Sen. Brown to Rep. Villa

00:59:16 Sen. Esp to Rep. Villa

00:59:33 Sen. Esp to Andy Poole, DOC

01:02:09 Sen. Balyeat to Andy Poole, DOC

Closing by Sponsor:

01:03:46 Rep. Villa

HEARING ON HB 65

Opening Statement by Sponsor:

01:06:41 **REP. DAN VILLA (D), HD 86**, opened the hearing on **HB 65**, Revise uninsured employer's subsequent injury fund-increase dept. inspect. auth..

Proponents:

01:10:00 Jerry Keck, Administrator, Employment Relations Bureau, DLI

EXHIBIT(bus47a04)

01:22:32 Don Judge, Montana Injured Workers Resource Council, and Teamsters Local 190

01:28:54 Shawn Bubb, Montana School Board Association

01:32:37 Jason Miller, Montana AFL-CIO

01:34:44 Nancy Butler, Montana State Fund

01:35:11 Bob Worthington, Montana Municipal Insurance Authority (MMIA)

01:37:02 Andrea Olsen, Montana Trial Lawyers Association, also spoke for Beda Lovitt, Montana Medical Association

01:39:31 George Wood, Montana Self-Insurers Association

01:40:06 Larry Kibbee, Property Casualty Insurers Association of America (PCIAA)

Opponents: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

01:40:40 Sen. Tropila to Rep. Villa

01:41:04 Sen. Jackson to Don Judge, Montana Injured Workers Resource Council, and Teamsters Local 190

01:42:17 Sen. Jackson to Bob Worthington, MMIA

01:43:49 Sen. Esp to Jerry Keck, DLI

01:47:55 Sen. Squires to Riley Johnson, NFIB

01:50:01 Sen. Jackson to Larry Kibbee, PCIAA

01:51:39 Sen. Jackson to Jerry Keck, DLI

01:53:32 Sen. Squires

01:55:01 Sen. Cocchiarella to Jerry Keck, DLI

01:58:39 Sen. Squires to Jerry Keck, DLI

Closing by Sponsor:

Rep. Villa

ADJOURNMENT

Adjournment: 11:10 A.M.

_____
SEN. VICKI COCCHIARELLA, Chairman

_____
CLAUDIA JOHNSON, Secretary

VC/cj

Additional Exhibits:

EXHIBIT(bus47aad.pdf)

BUSINESS, LABOR & ECONOMIC AFFAIRS
EXHIBIT No. 4
DATE 3-6-07
BILL No. HB 65

TESTIMONY IN FAVOR OF HB 65
Before the Senate Business, Labor and Economic Affairs Committee
Jerry Keck, Administrator
Employment Relations Division
Department of Labor and Industry
March 6, 2007

Madam Chair, members of the committee, for your record my name is Jerry Keck. I am the administrator of the Employment Relations Division in the Department of Labor and Industry. It is my pleasure to appear before you as a proponent of HB 65 which was requested by the Department. We want to thank Rep. Villa for sponsoring the bill.

The Employment Relations Division is charged with implementing a number of the state statutes that affect the employer – employee relationship. One broad area where we have regulatory responsibility is workers' compensation. We are responsible for verifying that employers who are required to have workers' compensation coverage have a policy in place. We issue the independent contractor exemption certificates that verify that certain persons engaged in independent trades, occupations and professions are exempt from the coverage requirements. And we administer the subsequent injury fund that is intended to eliminate concern by an employer when hiring a worker with a disability that there is a higher risk of injury that may affect their workers' compensation premium

HB 65 addresses several issues that the Department has identified in the course of carrying out our responsibilities for these programs.

Section 1 of the bill provides clear authority for the Department to enter a construction site for the purpose of determining that employees are properly covered under a workers' compensation policy and that the independent contractor exemption is being properly utilized. The Department has faced some resistance from construction crews, but the primary problem has been getting access into gated communities. Guards at the gates to these areas are typically instructed to not let anyone in unless they have an appointment. An appointment hinders the ability to investigate possible non-compliant activity.

Section 2 prohibits an insurer from using claim payments that are reimbursed from the Subsequent Injury Fund in the calculation of an employer's experience modification factor. If the payments are used in the calculation, it weakens the incentive for an employer to hire a certified individual that is built into the program.

Section 3 of the bill clarifies the Department's ability to notify insurers that an injured worker is certified under the Subsequent Injury Fund. It also allows an insurer to disclose Subsequent Injury Fund status to an insured employer. With medical privacy rising in importance, the Department would like clear authority on when certification information may be released. EEOC has confirmed this does not violate the federal Americans with Disabilities Act (ADA)..

Section 4 and 6 of the bill limits to $100,000 the amount the Uninsured Employer's Fund will pay in medical benefits on an injury claim. Currently there is no limit on the amount that is paid. The Uninsured Employer's Fund is designed to be a safeguard for injured employees who work for uninsured employers. The Fund pays, subject to its fund balance, the same benefits that an injured worker would be paid if the employer had coverage. The Uninsured Employer's Fund is funded by collection of penalties against employers who fail to provide coverage. The Fund is always one catastrophic claim away from insolvency. A cap on the amount of medical benefits paid on an individual claim will allow payments to be made for the other claims filed with the Uninsured Employers' Fund. Within the past 6 years there have only been 2 claims where more than $100,000 has been paid out in medical benefits on a single claim.

Section 5 was added as a House amendment to clarify that the injured worker would not be personally liable for medical costs in excess of $100,000 that are not paid by the Uninsured Employer's Fund. It also clarifies that the medical provider that is not fully reimbursed may bring an action against the uninsured employer to recover payment for medical services

Section 7 will limit the total reimbursement from the Subsequent Injury Fund to the amount in the Fund and the amount that can be collected through an assessment in the following year. The Subsequent Injury Fund has been set up to be a pay as you go fund for a number of years. That is to say, as money is paid from the Fund, assessments are made to replenish the Fund. Under accounting standards the State is forced to recognize liability as if the Fund was actuarially funded for known and potential claims. The Department does not intend for this change to limit the amount that is paid from the Fund, but only to clarify that the State has no ultimate liability that needs to be accounted for on the books.

Section 8 allows the Department to make an assessment to replenish the amount in the Subsequent Injury Fund when the total assessment equals or exceeds $500,000 rather than the $200,000 currently in statute. Because the amount needed to replenish the Fund is small each year and the assessment mechanism is a surcharge against employer's premium payments, a small employer's assessment surcharge may be only pennies. The accounting for these small amounts can be very burdensome. Delaying the assessment until a larger amount is needed, will not significantly affect the Fund or employers.

Madam Chair, I will try to answer any questions that the committee may have. I urge your support for HB 65 without amendments. Thank you.

MONTANA SENATE
2007 LEGISLATURE

ROLL CALL

BUSINESS, LABOR AND ECONOMIC AFFAIRS

DATE 3.6.07

NAMES	PRESENT	ABSENT	EXCUSED
SEN. JOE BALYEAT (R)	✓		
SEN. ROY BROWN (R)	✓		
SEN. JOHN ESP (R)	✓		
SEN. VERDELL JACKSON (R)	✓		
SEN. LANE LARSON (D)	✓		
SEN. DON RYAN (D)	✓		
SEN. FRANK SMITH (D)	✓		
SEN. CAROLYN SQUIRES (R)	✓		
SEN. DONALD STEINBEISSER (R)	✓		
SEN. JOE TROPILA (D)	✓		
SEN. VICKI COCCHIARELLA (D) CHAIRWOMAN	✓		
PAT MURDO (LSD)	✓		
CLAUDIA JOHNSON, SECRETARY	✓		

MONTANA STATE SENATE
2007 LEGISLATURE

VISITOR REGISTER

BUSINESS, LABOR AND ECONOMIC AFFAIRS

DATE 3-6-07

BILLS BEING HEARD TODAY HB 65, 76, 137

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
George Wood	406-549-8816	MT. Self-Insurers Assoc	HB 65	✓	
Terry Keck	444-6541	MT Dept of Labor + Ind	HB 65	✓	
Terry Keck	444-6541	MT Dept of Labor + Ind	HB 76	✓	
Shalon Boyd	449-1510	MT Biz Assit Connection	HB 137	✓	
Quinn Ness	841-2758	MT Dept of Commerce	HB 137	✓	
Lucky Kibbee	360-770-6925	PCI	HB 65	✓	
Don Judge	459-1708	Teamsters Local 190 MT Building Trades Resource Council	HB 65	Reluctant ✓	
Nancy Butler	444-7725	MT State Funds	HB 65	✓	
~~Susan Knudsen~~	~~652-4824~~				
~~Jack Knudsen~~	11				
Andrea J. Olsen		MTLA	HB 65	✓	✓
Andrea J. Olsen		11	HB 76		✓ ✓
Beckhoff		MMA	HB 65		✓
Shawn Rich	4572418	MSGA	HB 65	X	
Tasa Mills	442-1708	MTAFL-CIO	HB 65	X	
Bob Worthington	439-0907	MMIA	HB 65	✓	
Jamie Copland	782-7333	HEADWATERS RMDD	HB 137	✓	
~~Debra Keeler~~	~~[illegible]~~	~~Chamber RMDD~~			
Riley Johnson	443-3797	NFIB	HB 137	✓	
Riley Johnson	443-3797	NFIB	HB 65	✓	
Ronda Wiggers	899-5659	Grt Flls/Helena Chamber of Commerce	HB 137	✓	
Gary Amestoy	443-3370	Richland Economic Development Corporation	HB 137	✓	

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

CHAPTER NO. 48

[HB 65]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE POWER OF THE DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS' COMPENSATION LAWS; PROHIBITING INSURERS FROM INCLUDING CERTAIN REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF $100,000 FOR EACH CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY FUND ASSESSMENT; AMENDING SECTIONS 39-71-225, 39-71-503, 39-71-508, 39-71-510, 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Inspection of construction sites — public policy — penalty. (1) In recognition of the benefit of fair competition among business competitors and the public policy of this state providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that it is reasonable to allow access by authorized employees of the department onto construction sites for the purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid exemption from insurance coverage.

(2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid exemption is held by a worker present on a construction site, authorized employees of the department may enter onto any construction site for which a construction permit is required or has been issued.

(3) Upon presentation of proper credentials, department employees must be admitted to a construction site to:

(a) gather information relating to compliance with the coverage requirements of this chapter; and

(b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

(4) This section does not authorize the department's employees to engage in a breach of the peace. The department may request the assistance of appropriate local law enforcement agencies to peaceably enter a construction site.

(5) A person who purposely or knowingly restricts the access to a construction site by a credentialed department employee or who obstructs the employee in the performance of the employee's duties under this section commits the offense of obstruction of a public servant as provided in 45-7-302.

(6) As used in this section, the following definitions apply:

(a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and includes:

(i) a boiler permit;

(ii) a building permit;

(iii) an electrical permit;

(iv) an elevator permit;

(v) a mechanical permit; or

(vi) a plumbing permit.

(b) "Construction site" means any parcel of real property where work is being performed for which a construction permit is required or has been issued.

Section 2. Reimbursement of subsequent injury fund — effect on claims experience rating. An insurer that uses an employer's claims costs experience as a factor that influences the amount of premium charged to that particular employer by using an experience modification factor or similar rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury fund.

Section 3. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation~~; and~~.

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution*; and*

(d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement by the subsequent injury fund.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 4. Section 39-71-503, MCA, is amended to read:

"39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for ~~the administration of the fund and for~~ the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund."

Section 5. Section 39-71-508, MCA, is amended to read:

"39-71-508. Coordination of remedies — *limitation of liability of employee to third-party providers — rights of third-party providers.* *(1)* An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

~~(1)~~*(a)* a claim for benefits from the uninsured employers' fund;

~~(2)~~*(b)* a damage action against the employer in accordance with 39-71-509;

~~(3)~~*(c)* an independent action against an employer as provided in 39-71-515; or

~~(4)~~*(d)* any other civil remedy provided by law.

(2) An employee who is entitled to recover under this part is not liable to any third-party provider for services provided to the employee that are not reimbursed by the uninsured employers' fund.

(3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services provided to an injured employee may bring an action directly against the uninsured employer for the amount of services that were not paid by the uninsured employers' fund."

Section 6. Section 39-71-510, MCA, is amended to read:

"39-71-510. Limitation on benefit entitlement under fund. *(1)* Notwithstanding the provisions of 39-71-407, ~~and~~ 39-71-503, *and subsection (2) of this section,* injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the ~~sums~~ *money* in the fund. If the department determines at any time that the ~~sums~~ *money* in the fund ~~are~~ *is* not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

(2) The maximum medical benefits entitlement for any single claim against the fund is limited to an aggregate amount of $100,000."

Section 7. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited. *(1)* A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

(2) The liability of the fund for reimbursement under this section is limited to the amount currently in the fund at the time the reimbursement request is received by the fund and the amount collectible in the next assessment period pursuant to 39-71-915."

Section 8. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in the preceding fiscal year and the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate

share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the

amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than ~~$200,000~~ *$500,000* for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year."

Section 9. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 and 2].

Section 10. Effective date. [This act] is effective July 1, 2007.

Section 11. Applicability. [Sections 4 and 6] apply to injuries and occupational diseases occurring on or after July 1, 2007.

Approved March 27, 2007

CHAPTER NO. 49

[HB 84]

AN ACT CLARIFYING THE JURISDICTION OF COURTS CONCERNING MISDEMEANOR CRIMINAL ACTIONS PROSECUTED UNDER THE MONTANA ALCOHOLIC BEVERAGE CODE; AND AMENDING SECTION 16-6-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-6-201, MCA, is amended to read:

"16-6-201. Jurisdiction of courts. *(1)* As to misdemeanor actions, the district courts of this state ~~shall~~ have concurrent jurisdiction with justice of the peace courts in all prosecutions under ~~this code~~ *the Montana Alcoholic Beverage Code described in 16-1-101.*